

N.D.A.G. Letter to Ficek (June 6, 1986)

June 6, 1986

Mr. Vince H. Ficek
City Attorney
P.O. Box 866
Dickinson, ND 58601-0866

Dear Mr. Ficek:

Thank you for your letter dated March 21, 1986, in which you requested an Attorney General's opinion on the legality of a plan to avoid a city-wide deficiency levy for delinquent special assessments.

According to your letter, the city of Dickinson is experiencing economic hardship and many developers and entities are unable to pay special assessments on their property. As an alternative to levying a city-wide deficiency levy, you inquired about the feasibility of permitting the developers to deed the properties to the city before the city would be required to sell the properties for delinquent taxes. The city would then contract, lease, or otherwise convey the properties back to the developers and establish a payment schedule. You suggested that the developers might then be able to pay their taxes. In short, you stated that the plan "would extend the term for payment of the delinquent special assessments over a longer period . . . allowing the [developers] to . . . maintain the properties until . . . the properties could be sold and the delinquent special assessments fully paid."

Municipalities do have the power to acquire real and personal property "by lease, purchase, gift, condemnation [and] other lawful means . . . for all purposes authorized by law or necessary to the exercise of any power granted." N.D.C.C. § 40-05-01(55). Municipalities also have the power to "convey, sell, dispose of, or lease personal property and real property." N.D.C.C. §40-05-01(56). However, I believe that this general power is circumscribed by N.D.C.C. §§ 40-24-04 through 40-24-08 because those sections prescribe limitations upon payment periods for special assessments. For example, §40-24-07 provides that "[s]pecial assessments for the expense of opening, widening, grading, graveling, or extending streets shall be paid in equal annual installments . . . extending over a period of not more than thirty years." N.D.C.C. § 40-24-07. See also § 40-24-04 (sewers - thirty years); §40-24-05 (water mains and waterworks - thirty years); §40-24-06 (paving and repaving - thirty years); §40-24-08 (street beautification - ten years). These sections indicate that the Legislature intended to establish limited periods within which special assessments must be paid. Undoubtedly, one of the reasons that the Legislature imposed these limits was to ensure that municipal credit ratings remain reputable.

N.D.C.C. §40-26-08 supports this view implicitly as it requires municipalities to execute

deficiency levies if a special assessment district is unable to meet its obligations within the prescribed periods. N.D.C.C. § 40-26-08 provides, in part, as follows:

Whenever all special assessments and all utility revenues and taxes, if any, appropriated and theretofore collected for a special improvement, made under authority of any law authorizing the payment of the cost thereof in whole or in part from special assessments, are insufficient to pay the principal or interest then due on the special improvement warrants issued against such improvement, the governing body shall levy a tax upon all of the taxable property in the municipality for the payment of such deficiency.

N.D.C.C. § 40-26-08 (emphasis supplied). Cf. Stutsman v. Arthur, 16 N.W.2d 449, 455 (N.D. 1944) (40-26-08 obligates municipalities to levy general taxes and make good deficiencies in special assessment funds); Marks v. City of Mandan, 296 N.W. 39, 45 (N.D. 1941); (40-26-08 broadens liability of municipality from special contingency to general contingency liability for any deficiency whatever the cause.)

Thus, a city may acquire property for the purpose of maintaining a program that enables taxpayers to extend the payment periods for special assessments only if the time limits set out in N.D.C.C. §§ 40-24-04 through 40-24-08 are also met.

Sincerely,

Nicholas J. Spaeth

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